IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.100 OF 2005

Mr. Arun Sadashiv Pakhar ...Applicant

V/s.
The State of Maharashtra ...Respondent

Mr. Jayesh Bansilal Kocheta for the Applicant.
Ms. Sangeeta Shinde A.P.P.for the Respondent.

CORAM: A.S. OKA, J.
DATED: JUNE 13, 2005.

P.C.:

1. The challenge in this Application is to the order dated 9th March, 2005 passed by the Adhoc Additional Sessions Judge by which the Application for discharge made by the Applicant has been rejected. The case of the Applicant is that Section 302 of the Indian Penal Code cannot be applied. Reliance is placed on various documents including F.I.R.

2. The learned Trial Judge held that the chargesheet has been submitted in the year 2003 and the Application is belatedly filed on 13th December, 2004. The learned Judge was of the view that since Section 34 of the Indian Penal Code has been applied, the

common intention is a question of fact which will have to be decided after the evidence is recorded. He, therefore, held that the Applicant cannot be discharged.

3. The contention of the learned Counsel for the Applicant is that even in the F.I.R. practically no role is attributed against the Applicant Arun. He submitted that all that can be said is that the Applicant was at highest present at the time of incident.

4. What is alleged in the F.I.R. is that the victim's close relative contested the local Municipal election and as a result of political rivalry the offence has been commited.

5. The view taken by the learned Sessions Judge that the common intention can be established only after evidence is recorded cannot be unreasonable. Hence, no interference is called for in revision application and the same is rejected.

JUDGE